

ENTERED

December 23, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

**The STATE OF TEXAS; and the
STATE OF LOUISIANA,**

Plaintiffs,

V.

Civil Action No. 6:21-cv-00016

The UNITED STATES OF AMERICA; ALEJANDRO MAYORKAS, Secretary of The United States Department of Homeland Security, in his official capacity; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; TROY MILLER, Senior Official Performing the Duties of the Commissioner of U.S. Customs and Border Protection, in his official capacity; U.S. CUSTOMS AND BORDER PROTECTION; TAE JOHNSON, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; TRACY RENAUD, Senior Official Performing the Duties of the Director of the U.S. Citizenship and Immigration Services, in her official capacity; and U.S. CITIZENSHIP AND IMMIGRATION SERVICES.

Defendants.

ORDER

The Court **ORDERS** the following:

1. The Parties' previous briefing and exhibits, including any supplemental briefing or extra-record evidence including affidavits or declarations, on Plaintiffs' Motion to Postpone the Effective Date of Agency Action or, in the Alternative, for Preliminary Injunction, (Dkt. No. 111), challenging the

Secretary of Homeland Security's Guidelines for the Enforcement of Civil Immigration Law (Sept. 30, 2021), e.g., (Dkt. Nos. 109, 111, 115, 116, 122, 128, 130, 131), are incorporated and consolidated with this Court's consideration of the merits pursuant to Federal Rule of Civil Procedure 65(a)(2). Pursuant to the Parties' agreement, the evidentiary materials attached to their previous briefing, and any supplemental exhibits, affidavits, or declarations they may submit, are admitted as authentic and without need of a sponsoring witness and are presumptively admitted as "part of the trial record and need not be repeated at trial." Fed. R. Civ. P. 65(a)(2). All objections, including to the Court's consideration of extra-record evidence, however, are considered preserved subject to the remaining schedule for raising such objections.

2. The Parties may submit additional affidavits or declarations, and those affidavits or declarations shall be limited to supplementing previously filed affidavits or declarations.
3. The Parties may call up to three live witnesses at trial per side. No new witness may be called in rebuttal.
4. Defendants' deadline of January 27, 2022, to file a responsive pleading, (Dkt. No. 114), is **VACATED**. That deadline is **STAYED** absent further order of the Court.
5. The following deadlines shall control the disposition of this case:
 - a. No later than January 11, 2022:
 - i. Plaintiffs shall file an Exhibit List identifying any affidavits, declarations, or documentary evidence, other than the administrative record, that they may wish the Court to consider, including any documents they may seek to introduce through live testimony. In lieu of repeated filings, Plaintiffs may designate previously filed affidavits, declarations, or documentary evidence. Plaintiffs are not required to identify documents they may potentially rely upon in cross-examination for purposes of impeachment. Plaintiffs shall produce courtesy copies to the Court and the Defendants of the proposed Exhibits but shall not file them.
 - ii. Plaintiffs shall file a Witness List identifying any witness they seek to call for live testimony at trial. For each witness, Plaintiffs shall provide the topics and scope of the expected

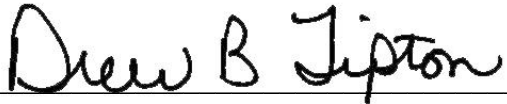
testimony. Plaintiffs may re-call any of their witnesses in rebuttal to Defendants' witnesses' testimony.

- iii. Defendants shall file the administrative record that they previously served on Plaintiffs.
- b. No later than January 20, 2022:
 - i. Defendants shall file an Exhibit List identifying any affidavits, declarations, or documentary evidence, other than the administrative record, that they may wish the Court to consider, including any documents they may seek to introduce through live testimony. Defendants are not required to identify documents they may potentially rely upon in cross-examination for purposes of impeachment. Defendants shall produce courtesy copies to the Court and the Plaintiffs of the proposed Exhibits but shall not file them.
 - ii. Defendants shall file a Witness List identifying any witness they seek to call for live testimony at trial. For each witness, Defendants shall provide the topics and scope of the expected testimony.
- c. No later than January 24, 2022:
 - i. The Parties shall file any motions to exclude evidence or witnesses. These motions are without prejudice to objections at trial to particular testimony or particular uses of a piece of evidence and are apart from any argument about extra-record evidence.
- d. No later than January 26, 2022:
 - i. The Parties shall separately submit proposed findings of fact and conclusions of law. Each party must specify all proposed findings it anticipates establishing at trial. To the extent possible in advance of trial, cite deposition or declaration testimony, expected witness testimony, exhibits, or other evidence to support each proposed finding. Specify stipulated or agreed facts.
- e. No later than January 27, 2022 at 5:00 PM:
 - i. The Parties shall file responses to any motion to exclude evidence or witnesses.

- f. The Parties shall appear for a Final Pretrial Conference on January 31, 2022, at 1:00 p.m. in Courtroom 11A in Houston, Texas. The Court may address pending motions and objections and pre-mark and pre-admit exhibits.
- g. Trial shall begin on February 1, 2022 at 9:00 a.m. in Courtroom 11A in Houston, Texas.
- h. The Parties shall present argument the business day after evidence is closed.
- i. No later than February 17, 2022, the Parties shall file a Joint Proposed Findings of Fact and Conclusions of Law. The Parties may file any post-trial memoranda of law no later than this date.

It is SO ORDERED.

Signed on December 23, 2021.



DREW B. TIPTON
UNITED STATES DISTRICT JUDGE